vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3908 OF 2007

Malu Ragho Jadhav ... Petitioner

v/s.

M/s.Eicher Limited & Ors. ... Respondents

a/w

WRIT PETITION NO.4048 OF 2007

Malu Ragho Jadhav ... Petitioner

Vs.

M/s.Eicher Limited & Ors. ... Respondents

Mr.Ravindra Nair for Petitioner
Mrs.N.R. Patankar with Mr.V.P. Sawant for Respondents

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 14, 2007**

P.C.:

. The petitioner was issued two chargesheets for certain acts of misconduct. Since the petitioner's reply was not found to be satisfactory, two separate domestic enquiries were conducted against the petitioner in respect of both the chargesheets. The enquiry officer has given his findings which were forwarded to the petitioner by the respondent company. While furnishing the report, the respondent company called upon the petitioner to comment upon the findings of the Enquiry Officer in both the enquiries. Instead of submitting his comments or his objections to the enquiry report, the petitioner filed Complaint (ULP) Nos.241 of

1999 and 400 of 2000 challenging the enquiries conducted against him in respect of the two chargesheets.

2. Writ Petition No.3908 of 2007 has been filed challenging the order of the Labour Court dated 26.4.2005 and of the Industrial Court in revision application Nos.104 and 107 of 2006. This writ petition must be dismissed as the order of the Labour Court has resulted in the Labour Court passing an order in respect of the enquiry conducted against the petitioner. This order of the Labour Court dated 23.8.2005 has been challenged by the petitioner in Writ petition NO.4048 of 2007. The Labour Court has concluded that the enquiry held against the petitioner was fair and proper, procedurally. However, it appears from the order that the aspect of perversity of the order has not been considered.

3. Mrs.Patankar, the learned Counsel for the respondent company, points out that the complaints had been filed prior to any action being taken against the petitioner pursuant to the enquiry report. The petitioner has been on suspension for 10 years because on various occasions revision applications have been filed by him, thus delaying the entire proceedings in the complaint. She points out that in the year 1999 and 2000, the company had called upon the petitioner to

submit his comments on the enquiry officer's reports in respect of both the enquiries, which the petitioner has not done so far. She submits that the company has thus not been able to consider whether it should take any punitive action against the petitioner for the last 10 years.

4. In these circumstances, Writ Petition No.3908 of 2007 must be dismissed as it has become infructuous and it is accordingly dismissed as such. In case of Writ Petition No.4048 of 2007, without going into the merits of the impugned orders, the following order would meet the ends of justice:

ORDER

i) The petitioner shall submit his comments and objections to the reports of the Enquiry Officer in respect of both the enquiries conducted against him, within four weeks from today.

ii) After receiving the petitioner's submissions, the company may take action against the petitioner, if they so desire, in accordance with law.

iii) In the event the company desires to terminate the services of the petitioner either by way of dismissal or discharge, the company shall pass the order and keep the same in abeyance for a period of two weeks, after serving it on the workman.

iv) In the event the petitioner, if so advised, challenges the order of dismissal or discharge by filing a Complaint or by seeking a Reference, the Labour Court/Industrial Tribunal will decide the perversity of the findings of the Enquiry Officer in both the enquiries held against the petitioner; the fairness of the enquiries having already been decided by the Labour Court in complaint ULP Nos.241 of 1999 and 400 of 2000.

v) In the event the Labour Court/Industrial Tribunal dismisses the complaint/ Reference and the petitioner challenges that order in this Court, the petitioner would be at liberty to challenge the orders passed in Complaint (ULP) No.241

of 1999 and Revision Application Nos.105 and 109 of 2006 to the extent they decide that the enquiries instituted against the petitioner were conducted in a fair and proper manner.

vi) The findings regarding fairness of the enquiry will be binding on the petitioner in the fresh complaint that may be filed or in any revision application filed therefrom.

4. The petitioner undertakes to withdraw the pending complaint by 24.8.2007.

5. In view of this, Writ Petition No.4048 of 2007 is disposed of.